

AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1713

**Introduced by Committee on Judiciary (Corbett (Chair), Hancock,
Jackson, Laird, Longville, Montanez, Steinberg, and Vargas)**

February 26, 2003

An act to amend Section 1280 of, and to add Sections 1281.84 and 1287.1 to, the Code of Civil Procedure, relating to arbitration.

LEGISLATIVE COUNSEL'S DIGEST

AB 1713, as amended, Committee on Judiciary. Consumer arbitration agreements.

(1) Existing law provides for the enforcement of arbitration agreements and requires a court to vacate an arbitration award in specified circumstances.

This bill would define attorney for a party, consumer arbitration, consumer party, and private arbitration company, and expand the definition of neutral arbitration for these purposes, as specified.

(2) Existing law permits consumers to contract to arbitrate and regulates the conduct of arbitrations.

This bill would provide that a private arbitration company or self-regulatory organization (SRO) that administers a consumer arbitration in violation of specified provisions of law shall, in the court's discretion, be subject to disgorgement of any administrative fee obtained as a result of that violation.

(3) Existing law requires a court to vacate an arbitration award under specified circumstances.

This bill would prohibit an arbitrator or private arbitration company involved in a consumer arbitration from conducting or administering further arbitration of the dispute if a court vacates the award, unless the consumer party elects otherwise in writing prior to any rearbitration of the matter.

(4) *This bill would make specified findings and declarations in regard to the exclusion of self-regulatory organizations from the definition of private arbitration company and the retroactive effect of related definitions, as specified.*

(5) *This bill would provide that one of the changes in Section 1281.84 of the Code of Civil Procedure proposed by this bill shall become operative only if both this bill and AB 1714 are enacted and become effective on or before January 1, 2004, and AB 1714 adds a specified provision.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1280 of the Code of Civil Procedure is
2 amended to read:

3 1280. As used in this title:

4 (a) “Agreement” includes, but is not limited to, agreements
5 providing for valuations, appraisals, and similar proceedings and
6 agreements between employers and employees or between their
7 respective representatives.

8 (b) “Attorney for a party” includes, *but is not limited to*, any
9 attorney actually representing a party and any attorney present at
10 the arbitration hearing or who is identified in any arbitration brief
11 or other paper submitted to the arbitrator as representing a party
12 for purposes of the arbitration.

13 (c) “Award” includes, but is not limited to, an award made
14 pursuant to an agreement not in writing.

15 (d) “Consumer arbitration” means an arbitration that is
16 binding on the consumer and conducted under a predispute
17 arbitration provision contained in a contract that meets both of the
18 following criteria:

19 (1) The contract is with a consumer party.

(2) The arbitration provision is contained in a printed form agreement or was drafted by or on behalf of, or inserted by or on behalf of, the nonconsumer party.

(e) “Consumer party” means a party to a consumer arbitration agreement who, for the purpose of that agreement, is any of the following:

(1) An individual who seeks or acquires, including by purchase, lease, or license, any goods or services primarily for personal, family, or household purposes, including financial services, insurance, and other goods and services, as defined in Section 1761 of the Civil Code.

(2) An individual who is an enrollee, a subscriber, or an insured under a health care service plan, within the meaning of Section 1345 of the Health and Safety Code, or a health care insurance plan, within the meaning of Section 106 of the Insurance Code.

(3) An individual with a medical malpractice claim that is subject to arbitration pursuant to a predispute arbitration agreement.

(4) An employee or applicant for employment in a dispute arising out of, or relating to, his or her employment or prospective employment, except a dispute under or arising out of a collective bargaining agreement between an employer and its employees or between their respective representatives.

(f) “Controversy” means any question arising between parties to an agreement whether the question is one of law, of fact, or both.

(g) “Neutral arbitrator” means an arbitrator who is selected or appointed by one of the following methods:

(1) Jointly by the parties or by the arbitrators selected by the parties.

(2) By the court when the parties or the arbitrators selected by the parties fail to select an arbitrator who was to be selected jointly by them.

(3) By a private arbitration company, under an agreement of the parties or applicable rules.

(h) “Party to the arbitration” means a party to the arbitration agreement who does either of the following:

(1) Seeks to arbitrate a controversy pursuant to the agreement against whom the arbitration is sought.

(2) Is made a party to the arbitration by order of the neutral arbitrator upon the party’s application, upon the application of any

1 other party to the arbitration, or upon the neutral arbitrator's own
2 determination.

3 (i) "Private arbitration company" means any
4 nongovernmental entity or individual that holds itself out as
5 managing, coordinating, or administering arbitrations, or
6 providing the services of neutral arbitrators, or making referrals or
7 appointments to, or providing lists of, neutral arbitrators. "Private
8 arbitration company" includes, *but is not limited to*, any entity
9 owned, in whole or in part, by any individual, or affiliated with a
10 private arbitration company, but does not include individuals
11 appointed to serve as the arbitrator, entities that administer, make
12 referrals or appointments to, or provide lists of arbitrators in, fewer
13 than five consumer arbitration cases per year, or any
14 self-regulatory organization (SRO) as defined in the federal
15 Securities and Exchange Act of 1934 (15 U.S.C. Sec. 78c(a)(26))
16 or the federal Commodity Exchange Act (7 U.S.C. Sec. 1 et seq.)
17 and regulations adopted in implementation of those acts.

18 (j) "Written agreement" shall be deemed to include a written
19 agreement which has been extended or renewed by an oral or
20 implied agreement.

21 SEC. 2. Section 1281.84 is added to the Code of Civil
22 Procedure, to read:

23 1281.84. Any private arbitration company or self-regulatory
24 organization (SRO) that administers a consumer arbitration in
25 violation of Section 1281.6, 1281.92, 1284.3, or 1287.1, shall be
26 subject, at the discretion of the court, to disgorgement of any
27 administrative fee obtained as a result of the violation of these
28 sections.

29 SEC. 2.5. *Section 1281.84 is added to the Code of Civil*
30 *Procedure, to read:*

31 1281.84. *Any private arbitration company or self-regulatory*
32 *organization (SRO) that administers a consumer arbitration in*
33 *violation of Section 1281.6, 1281.83, 1281.92, 1284.3, or 1287.1,*
34 *shall be subject, at the discretion of the court, to disgorgement of*
35 *any administrative fee obtained as a result of the violation of these*
36 *sections.*

37 SEC. 3. Section 1287.1 is added to the Code of Civil
38 Procedure, to read:

39 1287.1. If a court vacates an award in a consumer arbitration,
40 an arbitrator or private arbitration company involved in the

1 arbitration may not conduct or administer any further arbitration
2 of the dispute, unless the consumer party so elects in writing prior
3 to any rearbitration of the matter.

4 *SEC. 4. The Legislature finds and declares that the exclusion*
5 *of self-regulatory organizations (SROs) from the definition of*
6 *private arbitration company in Section 1280 of the Code of Civil*
7 *Procedure is not intended to affect the application to SROs of the*
8 *arbitrator ethics standards promulgated by the Judicial Council*
9 *pursuant to Section 1281.85 of the Code of Civil Procedure,*
10 *because this act does not relate to those issues. This act may not*
11 *be given retroactive effect with respect to the definitions set forth*
12 *in Section 1280 of the Code of Civil Procedure.*

13 *SEC. 5. Section 2.5 of this bill shall become operative only if*
14 *both this bill and AB 1714 are enacted and become effective on or*
15 *before January 1, 2004, and AB 1714 adds Section 1281.83 to the*
16 *Code of Civil Procedure, in which case Section 2 shall not become*
17 *operative.*

18 _____
19 CORRECTIONS

20 **Heading — Authors line 1.**
21 _____
22

